UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

BIOVAIL CORPORATION,
EUGENE N. MELNYK,
BRIAN CROMBIE,
JOHN MISZUK, and
KENNETH G. HOWLING,

Defendants.

No. 08-CV-02979 (LAK)

ECF Case

DECLARATION OF AMIT P. MEHTA IN SUPPORT OF DEFENDANT BRIAN CROMBIE'S MOTION *IN LIMINE* TO EXCLUDE THE TESTIMONY AND REPORT OF PLAINTIFF'S PROFFERED EXPERT, SCOTT A. TAUB, CONCERNING THE PHARMATECH TRANSACTION

I, AMIT P. MEHTA, hereby declare:

1. I am an attorney admitted to the Bar of the District of Columbia and the State of California (inactive) and am admitted *pro hac vice* with respect to the above-captioned matter. I am counsel in the Washington, D.C., office of Zuckerman Spaeder LLP. I respectfully submit this declaration in support of Defendant Brian Crombie's Motion *In Limine* to Exclude the Testimony and Report of Plaintiff's Proffered Expert, Scott A. Taub, Concerning the Pharmatech Transaction.

2. At least eleven different witnesses have testified under oath about the Pharmatech ("PTC") transaction either in this case, including its investigative phase, or in the Ontario Securities Commission ("OSC") matter. Those witnesses include the following:

a. Daryl Boyce, Senior Relationship Manager, from the Bank of Nova Scotia, which financed the PTC transaction;

b. Graeme Falkowsky, David Besant, and Jaime Rogers from the Bank of Montreal, which was one of the banks that considered participating in the syndication of the PTC loan;

c. Robert Scullion, Douglas Cameron, and Martin Lundie from Ernst & Young ("E&Y"), Biovail's and PTC's outside independent auditors, who provided Biovail with an opinion letter that Biovail was not required to recognize the liabilities and expenses of PTC and who conducted the 2001 and 2002 year-end audits of both companies;

d. Eugene Melnyk, the CEO of Biovail;

e. Christopher Bovaird, a consultant and Chartered Accountant (the Canadian equivalent of a CPA), hired to work with the banks in connection with the PTC transaction;

f. Jay Zises, the equity investor in PTC; and,

g. Brian Crombie, the CFO of Biovail.

3. Almost all of the above-listed witnesses testified about PTC more than once. Some of the listed witnesses, such as Daryl Boyce, Graeme Falkowsky, Jay Zises, Christopher Bovaird, and Brian Crombie, testified in both the OSC and SEC proceedings. There are, at least, twenty-four separate transcripts referencing the PTC transaction.

4. Attached as Exhibit A is a true and accurate copy of the SEC's Amended Complaint dated July 31, 2008.

5. Attached as Exhibit B is a true and accurate copy of Scott A. Taub's ("Taub") expert report in the OSC proceeding dated December 15, 2008.

6. Attached as Exhibit C is a true and accurate copy of Taub's expert report in this case dated June 3, 2009

7. Attached as Exhibit D is a true and accurate copy of Taub's rebuttal report in this case dated July 1, 2009.

8. Attached as Exhibit E is a true and accurate copy of Taub's deposition transcript in this case dated July 15, 2009.

9. Attached as Exhibit F is a true and accurate copy of the Statement of Financial Accounting Standards No. 68 (As Amended) – Research and Development Arrangements dated October 1982.

10. Attached as Exhibit G is a true and accurate copy of excerpts from Scott Taub and Teresa Dimattia, *Miller Revenue Recognition Guide* (2005).

11. Attached as Exhibit H is a true and accurate copy of the Affidavit of Ernst L. Ten Eyck.

12. Attached as Exhibit I is a true and accurate copy of the American Institute of Certified Public Accountants' Litigation Services and Applicable Professional Standards.

13. Attached as Exhibit J is a true and accurate copy of a memorandum from Bank of Nova Scotia regarding credit presentation to Pharmaceutical Technologies Limited dated June 21, 2001.

14. Attached as Exhibit K is a true and accurate copy of excerpts from Daryl Boyce's deposition in this case dated April 14, 2009.

15. Attached as Exhibit L is a true and accurate copy of excerpts from Brian Crombie's testimony taken during the SEC's investigative proceedings in *In the Matter of Biovail,* File No. NY-7250 dated October 5, 2005.

16. Attached as Exhibit M is a true and accurate copy of Timothy Franson's rebuttal report in this case dated July 2, 2009.

17. Attached as Exhibit N is a true and accurate copy of excerpts from Brian Crombie's deposition in this case dated May 14, 2009.

I declare under penalty of perjury that the statements made herein are true and correct.

Executed on October 23, 2009

Amit P. Mehta (admitted *pro hac vice)*